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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 DERWIN GRANT,

15 Plaintiff,

16 vs.

17 AFNI, INC.,

18 Defendant.

19 CASE NO.: C 07 2850 CW

20 **REPLY MEMORANDUM OF**
21 **POINTS AND AUTHORITIES IN**
22 **SUPPORT OF DEFENDANT'S**
23 **MOTION FOR JUDGMENT ON**
24 **THE PLEADINGS**

25 Date: August 2, 2007
26 Time: 2:00 p.m.
27 Ctrm: 2, 4th Floor

28 The Honorable Claudia Wilken

1 **I. ARGUMENT**

2 Plaintiff has wholly failed to oppose Defendant's Motion For Judgment On
3 The Pleadings. The Court should deem Plaintiff's failure to file an opposition as
4 his consent to the granting of Defendant's motion.

5 Defendant filed and served its motion on June 6, 2007, noticing a hearing
6 for July 12, 2007. Defendant subsequently filed and served an amended notice of
7 motion, rescheduling the hearing to August 2, 2007. Pursuant to Local Rule 7-
8 3(a), plaintiff's opposition was due no later than July 12, twenty-one days before
9 the re-noticed hearing. A review of the Court's Case Management/Electronic
10 Case Filing system (i.e., PACER), reflects that, as of July 18, 2007, Plaintiff has
11 not filed an opposition to Defendant's motion.

12 When a party does not oppose a motion, it "must file with the Court a
13 Statement of Nonopposition within the time for filing and serving any opposition."
14 See N.D. Cal. L.R. 7-3(b). Although this District does not have an analogous rule,
15 both the Central and Southern District of California have local rules that permit
16 those courts to deem the failure to oppose a motion as consent to the granting of a
17 motion. See C.D. Cal. L. R. 7-12 ("The failure to file any required paper, or the
18 failure to file it within the deadline, may be deemed consent to the granting . . . of
19 the motion."); S.D. Cal. L. R. 7.1.f.3.c ("If an opposing party fails to file the
20 papers in the manner required by Civil Local Rule 7.1.e.2, that failure may
21 constitute a consent to the granting of motion or other request for ruling by the
22 court."). Courts in both of those districts have applied their respective rules to
23 deem *pro se* plaintiffs' failure to oppose motions as consent to the granting of the
24 motions. See *Wade v. Ratella*, 407 F. Supp. 2d 1196, 1209 (S.D. Cal. 2005);
25 *Jackson v. Slade*, 2004 WL 1083351, *1 n.1 (C.D. Cal. Apr. 6, 2004); *Gadsen v.*
26 *Commissioner of Internal Revenue*, 2002 WL 31835452, *1 (C.D. Cal. July 18,
27 2002). Defendant submits that the Court should deem Plaintiff's failure to file an
28 opposition as his consent to the granting of Defendant's motion.

1 In his complaint, Plaintiff has simply alleged that Defendant “is in violation
2 of multiple laws” related to the collection and reporting of his account. Plaintiff
3 asserts three claims against Defendant purportedly arising under the Fair Credit
4 Reporting Act, 15 U.S.C. § 1681, *et seq.* (the “FCRA”) and the Fair Debt
5 Collection Practice Act, 15 U.S.C. § 1692 *et seq.* (The “FDCPA”). As explained
6 in Defendant’s opening memorandum, each of Plaintiff’s claims fail as a matter of
7 law.

8 First, Plaintiff has failed to allege facts sufficient to state a cause of action
9 against Defendant under the FDCPA. In order for a violation of section 1692g(b)
10 to have occurred, Plaintiff must prove that within thirty days of receipt of the
11 initial demand letter from Defendant, he requested validation of the debt from
12 Defendant. Plaintiff has not alleged that he made any request for validation of the
13 debt, let alone a timely request. Further, Plaintiff cannot amend his Complaint to
14 state a cause of action because the Ninth Circuit has squarely ruled that untimely
15 requests for verification of a debt do not trigger any obligation on the part of the
16 collector to verify the debt. *See Mahon v. Credit Bureau of Placer County, Inc.*,
17 171 F.3d 1197, 1202-1203 (9th Cir. 1999) (request for verification of debt made
18 nine months after receipt of initial notice from collector was untimely and
19 triggered no obligation on part of defendant to verify the debt). Plaintiff’s claims
20 under section 1692g(b) fail as a matter of law.

21 Second, Plaintiff has not alleged facts sufficient to constitute a cause of
22 action against Defendant under the FCRA. Nor can he. Section 1681c applies
23 only to Credit Reporting Agencies, not to furnishers of consumer credit
24 information such as Defendant. *See* 15 U.S.C. § 1681c ([N]o consumer reporting
25 agency may make any consumer report containing any of the following items of
26 information. . . .” (emphasis added)). Furthermore, Congress has declared, and the
27 Ninth Circuit has held, that a consumer like plaintiff cannot bring a private action
28 against a furnisher of information under section 1681s-2(a) of the FCRA for

1 allegedly reporting false or inaccurate information to a credit reporting agency.
2 *See Nelson v. Chase Manhattan Mortgage Co.*, 282 F.3d 1057, 1059-60 (9th Cir.
3 2002). Plaintiff's claims under the FCRA fail as a matter of law.

4
5 **II. CONCLUSION**

6 For the unopposed reasons stated in Defendant's Memorandum of Points
7 and Authorities, the Motion For Judgment On The Pleadings should be granted.
8 Plaintiff has failed to indicate that he can amend his complaint to assert facts that
9 would state a valid claim under the FDCPA or the FCRA. Nor could he.
10 Accordingly, Defendant respectfully requests that this Court issue an Order,
11 pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, granting judgment
12 in its favor with prejudice.

13
14 DATED: July 18, 2007

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PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the collection and processing of correspondence by mailing with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

**1) REPLY MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF DEFENDANT'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

by causing such document to be placed in a sealed envelope for collection and delivery by the United States Postal Service to the addressee indicated below:

VIA U.S. MAIL

Derwin Grant
245 Henry Street
San Francisco, CA 94114
Plaintiff in Pro Per

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on this 18th day of July, 2007.



Stephanie Schmitt